

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE FOURTEENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

-

WRIT PETITION NO : 23702 of 2004

Between:

A. Ramdas, S/o. Venkatappaiah, aged 58 years,
Occ: Ex-Manager Grade I, R/o. 4-2-137,
Srinagar Colony, Rotangnagar, Khammam.

..... PETITIONER

AND

A.P. State Ware Housing Corporation, Nampalli,
Hyderabad, Rep. by its Managing Director.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue order, direction or writ particularly one in the nature of writ of MANDAMUS or any other appropriate writ (i) declaring the Proceedings No. SWC/QC2/2447/Retd/Std.loss/2004 dated 22-11-2004 is illegal and arbitrary, (ii) declare the action of the respondent corporation in not releasing the retiral benefits to the petitioner on retirement from services of the corporation on 31-01-2004 A.N as illegal and arbitrary; (iii) direct the respondent Corporation to release the gratuity, provident fund, encashment of leaves, Group Insurance claims and other terminal benefits to which the petitioner is entitled to as on the date of his retirement i.e., 31-1-2004 together with interest at 18% per annum.

Counsel for the Petitioner: MR.G.VIDYASAGAR

Counsel for the Respondent: MR. C.S.Venkatesh

The Court made the following:

ORDER:

Challenging the proceedings No.SWC/QC2/2447/Retd/ Stg.loss/2004 dated 22.11.2004, the present writ petition is filed.

2. The petitioner worked in the respondent-corporation as Manager Grade-I and retired from service on 31.1.2004 on superannuation. Till his retirement, no communication was issued to him by the respondent-corporation with regard to the recoveries to be made from his terminal benefits. Since the terminal benefits have not been paid, the writ petitioner approached this Court by filing W.P.No.14733 of 2004 whereunder the respondent-corporation was directed to pass appropriate orders on the representation of the petitioner. Thereafter, the impugned proceedings have been passed. That is under challenge now.

3. Learned counsel for the respondent filed counter stating that the corporation is constantly pursuing the case of the petitioner with Senior Regional Manager, FCI for early write off for the storage loss declared by the petitioner at warehouse level as a special case in order to settle the terminal benefits and therefore there are no grounds to interfere with the proceedings impugned.

4. Learned counsel for the petitioner contended that since the petitioner has already retired from service, his retiral benefits cannot be withheld, inasmuch as no departmental enquiry is conducted fixing the liability of storage loss and hence the order under challenge suffers from legal infirmities.

5. On the other hand, the learned counsel for the respondent-corporation opposed the same on the ground that the corporation has not written off the storage loss and as per regulation 6 of A.P. State Warehousing Corporation Employees Gratuity fund regulations 1974, the corporation can, at its discretion, adjust any amount due to the corporation from out of the gratuity and therefore the impugned proceedings does not suffer from any legal infirmities.

6. It is the specific case of the petitioner that while he was in service, regular departmental enquiry was not conducted. While he was working at Kakinada VI

godown the respondent-corporation issued proceedings dated 25.04.2003 dropping all the charges. Therefore, as on today, no departmental enquiry has been initiated fixing the liability of the writ petitioner. In the impugned proceedings it shows that the total unsettled storage charges payable by FCI to SWC is Rs.35,50,068/-. The impugned order does not indicate that the petitioner was responsible for the said storage loss. No departmental enquiry is conducted so as to fix responsibility of the petitioner for the storage loss to the extent of Rs.35,50,068/-. It would be different matter if the respondent-corporation initiated departmental enquiry and fix the liability of the writ petitioner with regard to the loss caused to the corporation. There was no enquiry so far as fixing of storage loss is concerned. As per the regulation 6 of A.P. State Warehousing Corporation Employees Gratuity fund regulations, 1974 any amount that may be due to the corporation by any member of the staff on account of any advance made or loans given or any other account shall be adjusted at the discretion of the corporation from gratuity and only the balance if any will be paid. The learned counsel for the respondent relied upon the words “ any other account “ would mean the storage loss of Rs.35,50,068/-. This Court is unable to accept the said contention because the loss alleged to have been caused has not fixed on the writ petitioner while he was in service. On the other hand the proceedings of the corporation dated 30.04.2003 itself would go to show that in no way the State Warehousing Corporation is responsible towards maintenance and preservation since cleaning was undertaken when the FCI feel it necessary for disposal of the stock which arrived from Panjab after several years of storage for which the writ petitioner is no way is responsible. Such is the case, withholding of retirement benefits is illegal and not in accordance with the rules and regulations governing the service conditions of the writ petitioner.

7. The learned counsel for the petitioner relied on a decision in **Y.TATACHARY v. ACHARYA N.G.RANGA AGRICULTURAL UNIVERSITY, HYDERABAD** which reads thus:

“ A person cannot be a prosecutor, defender and a judge in his own cause. The respondent-University cannot be permitted to be a Judge of its own cause which runs contrary to the maxim *Nemo Unquam Judit In Se*. Admittedly, the University has not initiated any proceedings against the petitioner in accordance with law for his alleged violation of the bond said to have been executed by him before proceeding on study leave.”

The impugned order is liable to be set aside on the ground that it does not indicate that the petitioner was responsible for payment of storage loss and no departmental enquiry is conducted fixing the liability for causing storage loss and the respondent-corporation allowed the petitioner to retire on attaining superannuation and furthermore the respondent is also pursuing the matter with the F.C.I to write off storage deponent losses. As a matter of fact, they have addressed a letter to the F.C.I on 09.07.2004 and some other letters in which view of the matter when no liability is fixed on the petitioner, it is unjust on the part of the respondent to withhold the retirement benefits.

8. Therefore, the writ petition is allowed setting aside the impugned proceedings dated 22.11.2004 directing the respondent to release retirement benefits of the petitioner within two months from the date of receipt of a copy of this order. No costs.

K.C.BHANU,J.

Date: 14th February 2005

*BSB/TSNR

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Managing Director, A.P. State Ware Housing Corporation,
Nampalli, Hyderabad.

2. Two CD copies

